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Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF REPLY IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF'S
THIRD AMENDED COMPLAINT**

[F.R.E. 201]

Dept: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen
Date: May 16, 2024
Time: 1:30 p.m.

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Pursuant to Federal Rule of Evidence 201, Defendant Apple Inc. requests that, in connection with its Reply in Support of its Motion to Dismiss Plaintiff's Third Amended Complaint ("TAC"), the Court take judicial notice of the following document:

- **Exhibit A:** Complaint, *Banko v. Apple Inc.*, N.D. Cal. No. 3:13-cv-02977-VC, Dkt. 1 (June 27, 2013).

"The court may judicially notice a fact that is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). It is appropriate to take judicial notice of court filings and other matters of public record. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (citing *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)) (judicial notice of filings from other cases appropriate "[t]o determine what issues were actually litigated"); *Fidelity Nat'l Title Ins. Co. v. Castle*, 2011 WL 5882878, at *4 n.4 (N.D. Cal. Nov. 23, 2011) (citation omitted) (taking judicial notice of a complaint filed in a different case, though "not for the truth of the matter asserted in the other litigation").

Here, Plaintiff contends in her Opposition to Apple's Motion to Dismiss that her twelfth claim for "Breach of Implied Contract & Breach of Covenant of Good Faith and Fair Dealing" should not be dismissed and cites *Banko v. Apple Inc.*, 20 F. Supp. 3d 749 (N.D. Cal. 2013), where the Court declined to dismiss the plaintiff's "Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing" claim. *See* Dkt. 54 at ¶¶ 26-27. Apple requests that the Court take notice of the complaint at issue in *Banko*, not for the truth of the allegations asserted therein, but rather for the fact that the allegations therein were the operative allegations at issue in the motion to dismiss in *Banko*.

For the foregoing reasons, Apple respectfully requests that the Court take judicial notice of Exhibit A hereto.

Dated: April 16, 2024

By: /s/ Jessica R. Perry
JESSICA R. PERRY
Attorneys for Defendant Apple Inc.